

By Commissioner Cerio

ceriot-00117-17

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1 A proposal to amend
2 Section 16 of Article I of the State Constitution to
3 revise and establish additional rights of victims of
4 crime.

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6 Be It Proposed by the Constitution Revision Commission of
7 Florida:

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9 Section 16 of Article I of the State Constitution is
10 amended to read:

11 ARTICLE I

12 DECLARATION OF RIGHTS

13 SECTION 16. Rights of accused and of victims.—

14 (a) In all criminal prosecutions the accused shall, upon
15 demand, be informed of the nature and cause of the accusation,
16 and shall be furnished a copy of the charges, and shall have the
17 right to have compulsory process for witnesses, to confront at
18 trial adverse witnesses, to be heard in person, by counsel or
19 both, and to have a speedy and public trial by impartial jury in
20 the county where the crime was committed. If the county is not
21 known, the indictment or information may charge venue in two or
22 more counties conjunctively and proof that the crime was
23 committed in that area shall be sufficient; but before pleading
24 the accused may elect in which of those counties the trial will
25 take place. Venue for prosecution of crimes committed beyond the
26 boundaries of the state shall be fixed by law.

27 (b) To preserve and protect the right of crime victims to
28 achieve justice, to ensure a meaningful role throughout the
29 criminal and juvenile justice systems for crime victims, and to
30 ensure that crime victims' rights and interests are respected
31 and protected by law in a manner no less vigorous than
32 protections afforded to criminal defendants and juvenile

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33 delinquents, every victim is entitled to the following rights,
34 beginning at the time of his or her victimization:

35 (1) The right to due process and to be treated with
36 fairness and respect for the victim's dignity.

37 (2) The right to be free from intimidation, harassment, and
38 abuse.

39 (3) The right to be reasonably protected from the accused
40 and any person acting on behalf of the accused.

41 (4) The right to have the safety and welfare of the victim
42 and the victim's family considered when setting bail, including
43 setting pre-trial release conditions that protect the safety and
44 welfare of the victim and the victim's family.

45 (5) The right to prevent the disclosure of information or
46 records that could be used to locate or harass the victim or the
47 victim's family, or which could disclose confidential or
48 privileged information of the victim.

49 (6) The right to privacy, which includes the right to
50 refuse an interview, deposition, or other discovery request by
51 the defense or anyone acting on behalf of the defendant and to
52 set reasonable conditions on the conduct of any such interaction
53 to which the victim consents.

54 (7) A victim shall have the following specific rights upon
55 request:

56 a. The right to reasonable, accurate, and timely notice of,
57 and to be present at, all public proceedings involving the
58 criminal conduct, including, but not limited to, trial, plea,
59 sentencing, or adjudication, even if the victim will be a
60 witness at the proceeding, notwithstanding any rule to the
61 contrary. A victim shall also be provided reasonable, accurate,

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62 and timely notice of any release or escape of the defendant or
63 delinquent, and any proceeding during which a right of the
64 victim is implicated.

65 b. The right to be heard in any public proceeding involving
66 pretrial or other release from any form of legal constraint,
67 plea, sentencing, adjudication, or parole, and any proceeding
68 during which a right of the victim is implicated.

69 c. The right to confer with the state attorney concerning
70 any plea agreements, participation in pre-trial diversion
71 programs, release, restitution, sentencing, or any other
72 disposition of the case.

73 d. The right to provide information regarding the impact of
74 the offender's conduct on the victim and the victim's family to
75 the individual responsible for conducting any pre-sentence
76 investigation or compiling any pre-sentence investigation
77 report, and to have any such information considered in any
78 sentencing recommendations submitted to the court.

79 e. The right to receive a copy of any pre-sentence report,
80 and any other report or record relevant to the exercise of a
81 victim's right, except for such portions made confidential or
82 exempt by law.

83 f. The right to be informed of the conviction, sentence,
84 adjudication, place and time of incarceration, or other
85 disposition of the convicted offender, any scheduled release
86 date of the offender, and the release of or the escape of the
87 offender from custody.

88 g. The right to be informed of all post-conviction
89 processes and procedures, to participate in such processes and
90 procedures, to provide information to the release authority to

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91 be considered before any release decision is made, and to be
92 notified of any release decision regarding the offender. The
93 parole or early release authority shall extend the right to be
94 heard to any person harmed by the offender.

95 h. The right to be informed of clemency and expungement
96 procedures, to provide information to the governor, the court,
97 any clemency board, and other authority in these procedures, and
98 to have that information considered before a clemency or
99 expungement decision is made; and to be notified of such
100 decision in advance of any release of the offender.

101 (8) The rights of the victim, as provided in subparagraph
102 (7)a., subparagraph (7)b., or subparagraph (7)c., that apply to
103 any first appearance proceeding are satisfied by a reasonable
104 attempt by the appropriate agency to notify the victim and
105 convey the victim's views to the court.

106 (9) The right to the prompt return of the victim's property
107 when no longer needed as evidence in the case.

108 (10) The right to full and timely restitution in every case
109 and from each convicted offender for all losses suffered, both
110 directly and indirectly, by the victim as a result of the
111 criminal conduct. All monies and property collected from any
112 person who has been ordered to make restitution shall be first
113 applied to the restitution owed to the victim before paying any
114 amounts owed to the government.

115 (11) The right to proceedings free from unreasonable delay,
116 and to a prompt and final conclusion of the case and any related
117 post-judgment proceedings.

118 a. The state attorney may file a good faith demand for a
119 speedy trial and the trial court shall hold a hearing within

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120 five days to schedule a trial within fifteen days unless the
121 trial judge enters an order with written findings of fact
122 justifying a trial date more than fifteen days after the
123 hearing.

124 b. All state-level appeals and collateral attacks on any
125 judgment must be complete within two years from the date of
126 appeal in non-capital cases and five years in capital cases.
127 Each year, the chief judge of any district court of appeal or
128 the chief justice of the supreme court shall report on a case-
129 by-case basis to the speaker of the house of representatives and
130 the president of the senate all cases where the court was unable
131 to comply with this subparagraph and the circumstances causing
132 the delay. The legislature may adopt legislation to implement
133 this subparagraph.

134 (12) The right to be informed of these rights, and to be
135 informed that victims can seek the advice of an attorney with
136 respect to their rights. This information shall be made
137 available to the general public and provided to all crime
138 victims in the form of a card.

139 (c) The victim, the retained attorney of the victim, a
140 lawful representative of the victim, or the office of the state
141 attorney upon request of the victim may assert and seek
142 enforcement of the rights enumerated in this section and any
143 other right afforded to a victim by law in any trial or
144 appellate court, or before any other authority with jurisdiction
145 over the case, as a matter of right. The court or other
146 authority with jurisdiction shall act promptly on such a
147 request, affording a remedy by due course of law for the
148 violation of any right. The reasons for any decision regarding

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149 the disposition of a victim's right shall be clearly stated on
150 the record.

151 (d) The granting of these rights enumerated in this section
152 to victims may not be construed to deny or impair any other
153 rights possessed by victims. The provisions of this section
154 apply throughout criminal and juvenile justice processes are
155 self-executing and do not require implementing legislation.

156 (e) As used in this section, a "victim" is a person who
157 suffers direct or threatened physical, psychological, or
158 financial harm as a result of the commission or attempted
159 commission of a crime or delinquent act or against whom the
160 crime or delinquent act is committed. The term "victim" shall
161 include their lawful representative, the parent or guardian of a
162 minor, or the next of kin of a homicide victim, except upon a
163 showing that the interest of such individual would be in actual
164 or potential conflict with the interests of the victim. The term
165 "victim" does not include the accused. The terms "crime" and
166 "criminal" include delinquent acts and conduct ~~Victims of crime~~
167 ~~or their lawful representatives, including the next of kin of~~
168 ~~homicide victims, are entitled to the right to be informed, to~~
169 ~~be present, and to be heard when relevant, at all crucial stages~~
170 ~~of criminal proceedings, to the extent that these rights do not~~
171 ~~interfere with the constitutional rights of the accused.~~